Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1979

No. 79-1293

LLOYD PLUMMER,

Petitioner,

vs.

DANIEL KLEPAK, as Chairman of the NEW YORK STATE DRUG ABUSE CONTROL COMMISSION and NEW YORK STATE DRUG ABUSE CONTROL COMMISSION,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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The petitioner Lloyd Plummer submits this reply to respondents' brief in opposition to his petition for the granting of a writ of certiorari to the Court of Appeals of the State of New York.

Respondents in their brief focus upon the critical issue underlying this case — to wit: can a tenured public employee's constitutional rights of due process in the event of the involuntary termination of his employment be waived by the

provisions of a collective bargaining agreement. In other words can the provisions of a collective bargaining agreement be a voluntary, intelligent and knowing, with awareness of legal consequences, waiver of constitutional rights? This issue, it is submitted, has yet to be either decided nor considered by this Court.

Respondents, in arguing that it can, fail to point to any cases of this Court. Their reliance is primarily predicated upon *Farrell v. Carey,* 62 A.D. 2d 583, *app. dsmd.,* 45 N.Y. 2d 832, *app. dsmd.,* 47 U.S.L.W. 3527, *cert. denied,* 47 U.S.L.W. 3554 (1979). Such reliance is misplaced. The issue raised in *Farrell* did not involve involuntary termination of employment and thus the deprivation of a property right to which constitutional standards of due process would attach. Rather, it pertained to whether the provisions of a collective bargaining agreement were applicable in the event of the layoff of college teachers as a result of financial exigencies. It is patent in *Farrell* that the affected employees retained reemployment rights and that the property right inherent in their tenured public employment relationship had not been extinguished. So, too, it is apparent that apart from a right to file a grievance under the collective bargaining agreement, which in fact had been done, no State statute existed from which one could conclude that layoffs were barred except after a hearing.

Here, petitioner argues that his property right was extinguished when his tenured employment was terminated as a result of respondents' conclusion that his misconduct as evident by his absences constituted a resignation. Petitioner further asserts that respondents in destroying this property right did not meet the fundamental requisites of constitutional due process that would have afforded him an opportunity to challenge that determination as established by this Court in cases such as *Goldberg v. Kelly,* 397 U.S. 254 (1970); *Board of Regents v. Roth,* 408 U.S. 564 (1972); *Perry v. Sindermann,* 408 U.S. 593 (1972); *Arnett v. Kennedy,* 416 U.S. 134 (1973); *Memphis Light, Gas & Water Division v. Craft,* 436 U.S. 1 (1978). Finally,

petitioner argues that this basic right is one that can be waived only by him and then only voluntarily, knowingly and intelligently. *Fuentes v. Shevin,* 407 U.S. 67 (1972); *Boykin v. Alabama,* 395 U.S. 238 (1969); *cf., D.H. Overmyer Co. v. Frick Co.,* 405 U.S. 174 (1972). A collective bargaining agreement between a union and a public employer does not in itself constitute such an explicit waiver of constitutional rights.

It is therefore submitted that the petition filed herein for a writ of certiorari to the Court of Appeals of the State of New York should be granted.

Respectfully submitted,

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